

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1188-14
Bill No.: Truly Agreed To and Finally Passed CCS for SS for SCS for HCS for HB 393
Subject: Courts; Health Care Professionals; Medical Insurance; Liability; Hospitals;
Physicians
Type: Original
Date: March 28, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Road	More than \$1,000,000	More than \$1,000,000	More than \$1,000,000
Conservation	Unknown	Unknown	Unknown
Tort Victims' Compensation	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown) to More than \$1,000,000	(Unknown) to More than \$1,000,000	(Unknown) to More than \$1,000,000

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration – Administrative Hearing Commission, Department of Economic Development, Department of Mental Health, Department of Health and Senior Services, Missouri Consolidated Health Care Plan, and the Department of Insurance** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of the Attorney General** assume the cost of the proposed legislation could be absorbed within existing resources.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Department of Conservation (MDC)** assume the proposed legislation would have a positive impact on MDC funds. The exact amount of impact is unknown.

ASSUMPTION (continued)

Officials from the **Department of Transportation (MoDOT)** assume the new language added in Section 490.715, RSMo, would allow all parties in a tort case to introduce evidence of the amount actually paid for medical treatment rendered that was reasonable, necessary, and the proximate result of the alleged negligence. This would likely have a positive fiscal impact on Missouri Highways and Transportation Commission (MHTC)/MoDOT.

Section 637.067.1 amends the doctrine of joint and several liability so that if a jury determines that a defendant is less than 51% at fault, then such defendant is only responsible to pay for its percentage of fault. If a defendant is 51% or more at fault, then such defendant is jointly and severally liable for each and every defendant parties fault. In the case of punitive damages, a defendant is not liable for more than its percentage share of fault. This provision shall have a positive impact on MHTC/MoDOT. The amount is unknown, however expected to exceed \$1,000,000.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume the proposal would have an impact on the Division of Workers' Compensation, which administers the Tort Victims' Compensation Fund. The proposal limits punitive damages in tort cases. A limit on punitive damages would reduce the amount of money that is deposited into the Tort Victims' Compensation Fund. However, since the deposits of money in the Fund have been sporadic over the last few years and it is impossible to determine the number of judgements where there will be punitive damages awarded, DOLIR is unable to determine an exact fiscal impact the proposal will have on future deposits into the Fund.

Officials from the **Office of the Secretary of State (SOS)** assume an estimated 40,000 change of agent filings would be filed as a result of the legislation. SOS estimates that 50% of the 160,000 registered corporations have registered agents in St. Louis County, St. Louis City, and Jackson county, and that 50% of these will elect to change their registered agent as a result of the legislation. This means that 40,000 change of agent filings will be sent to the SOS for processing. To handle this one-time increase in workload, 10 temporary employees would be needed for approximately 3 months. SOS estimates the cost to be \$33,000. The revenues generated from the filings would be approximately \$400,000 (\$200,000 General Revenue and \$200,000 Technology Fund).

ASSUMPTION (continued)

Oversight assumes the Office of the Secretary of State could experience an increase in filings due to the proposed legislation. Oversight assumes the SOS could absorb the cost of the increase within existing resources. If the SOS experiences an increase that would justify temporary employees, the SOS could request funding through the appropriation process. Oversight also assumes the estimated 40,000 registered corporations that will change registered agents is speculative. Therefore, Oversight has show no fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
ROAD FUND			
<u>Savings</u> – Department of Transportation			
Liability limits	More than <u>\$1,000,000</u>	More than <u>\$1,000,000</u>	More than <u>\$1,000,000</u>
ESTIMATED NET EFFECT ON ROAD FUND	More than <u>\$1,000,000</u>	More than <u>\$1,000,000</u>	More than <u>\$1,000,000</u>
CONSERVATION FUND			
<u>Savings</u> – Department of Conservation			
Liability Limits	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON CONSERVATION FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

**TORT VICTIMS' COMPENSATION
FUND**

Losses – Department of Labor and
Industrial Relations

Reduced damages reduce deposits	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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**ESTIMATED NET EFFECT ON
TORT VICTIMS' COMPENSATION
FUND**

<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FISCAL IMPACT - Local Government

FY 2006
(10 Mo.)

FY 2007

FY 2008

\$0

\$0

\$0

FISCAL IMPACT - Small Business

The proposed legislation could have a fiscal impact on small businesses.

DESCRIPTION

The proposed legislation would change the laws affecting claims for damages and payment for the claims. In its main provisions, the proposal would:

SUITS AGAINST NONPROFIT CORPORATIONS – Section 355.176 – The act repeals and reenacts section 355.176 regarding services of process in suits against nonprofit corporations.

DESCRIPTION (continued)

INTEREST ON JUDGEMENTS – Section 408.040 – Require prejudgment interest to be calculated 90 days after the demand or offer is received by certified mail, return receipt requested. The demand or offer must be in writing and be accompanied by an affidavit from the claimant describing the nature of the claim and the damages claimed. For wrongful death, personal injury, and bodily injury claims, the demand letter must also list the medical providers of the claimant, include copies of all reasonably available medical bills, other medical information, and authorization to allow the other party to obtain employment and medical records. The demand must be left open for 90 days. The proposal would specify that claims for prejudgment and post-judgment interest in tort actions are calculated at an interest rate that is equal to the intended Federal Funds Rate plus 3% for prejudgment interest and 5% for post-judgment interest.

VALUE OF MEDICAL TREATMENT RENDERED – Section 490.715 – Parties may introduce evidence of the value of the medical treatment rendered to a party that was reasonable, necessary, and a proximate result of the negligence of any party.

VENUE – Section 508.010 – Where the cause of action accrues in Missouri, venue in all tort actions, including torts for improper healthcare, shall only be in the county where cause of action accrued. If the cause did not accrue in Missouri, then venue depends on whether there is an individual or corporate defendant. For an individual defendant, venue shall be in the county where an individual defendant resides or if the plaintiff resided in Missouri at the time the plaintiff was first injured, the county of the plaintiff's principal residence when the plaintiff was first injured. For a corporate defendant, venue shall be in either the county where the registered agent is located or, if the plaintiff resided in Missouri on the date of first injury, then the county containing the plaintiff's principal residence.

The act also repeals sections 508.040 (venue for corporations), 508.070 (venue for motor carriers) and 508.120 (disqualification of judge and change of venue).

RULES OF CIVIL PROCEDURE – Section 508.011 – Specify to the extent that rule 51.03 of the Missouri rules of civil procedure contradicts any provision of this chapter, the provisions of this chapter would prevail regarding any tort claim.

DESCRIPTION (continued)

PUNITIVE DAMAGES – Sections 510.263 – Tort actions based upon improper health care that are tried before a jury involving punitive damages shall be conducted in a bifurcated trial if requested by any party. "Punitive damage award" is defined to include an award for punitive or exemplary damages as well as an award for aggravating circumstances. Discovery of a defendant's assets only can occur after the trial court finds the plaintiff will have a submissible case for punitive damages.

PUNITIVE DAMAGE LIMITS – Section 510.265 – Limit an award for punitive damages to the greater of \$500,000 or five times the net amount of the judgment awarded to the plaintiff against the defendant. The limits on punitive damages do not apply to certain causes of action relating to housing discrimination.

SUPERSEDEAS BONDS – Section 512.099 – This section limits the amount of a supersedeas bond to \$50 million in all cases in which there is a count alleging a tort.

STATUTE OF LIMITATIONS IN ACTIONS AGAINST HEALTH CARE PROVIDERS – Section 516.105 – Currently, in no event may a suit be commenced after ten years from a minor's 20th birthday. The act changes it to two years from a minor's 18th birthday.

PEER REVIEW COMMITTEES – Section 537.035 – Authorizes the appointment of a peer review committee by the board of trustees or chief executive officer of a long-term care facility licensed under chapter 198, RSMo. This addition has the effect of making records of nursing home quality assessment and assurance committees privileged and inadmissible in court.

JOINT AND SEVERAL LIABILITY – Section 537.067 – Allow joint and several liability if a defendant is found to be 51% or more at fault. The defendant is jointly and severally liable for the amount of the judgment rendered against the defendant. If a defendant is found to be less than 51% at fault, the defendant is only responsible for the percentage of the judgment he or she is determined to be responsible for by the trier of fact. A party is responsible for the fault of another defendant or for payment of the proportionate share of another defendant if the other defendant was an employee of the party or if the party's liability for the fault of another arises out of the duty created by the Federal Employers' Liability Act. Defendants are only severally liable for the percentage of punitive damages that are attributed to the defendant by the trier of fact. In all tort actions, parties are prohibited from disclosing to the trier of fact the impact of the provisions relating to joint and several liability.

DESCRIPTION (continued)

WRONGFUL DEATH ACTIONS – Section 537.090 – For purposes of determining damages, if the deceased was not employed full time and was at least 50% responsible for the care of a minor, disabled person, or person over 65 years of age, then there shall be a rebuttable presumption that the value of the care provided shall be equal to 110% of the state average weekly wage.

DEFINITION OF “HEALTH CARE PROVIDER” – Section 538.205 – Includes long term care facilities licensed under Chapter 198, RSMo. The definition of “punitive damages” shall include exemplary damages and damages for aggravating circumstances.

MEDICAL MALPRACTICE NONECONOMIC DAMAGES CAP – Section 538.210 – In action for failure to render health care services, no plaintiff would recover more than \$350,000 irrespective of the number of defendants. This limitation would apply to failure to render health care services suits in certain circumstances and all claims for contribution. All individuals and entities asserting a claim for a wrongful death would be considered to be one plaintiff.

FAILURE TO RENDER HEALTH CARE SERVICES – Section 583.220 – A judgment would specify a future medical periodic payment schedule.

AFFIDAVIT OF MERIT – Section 538.225 – Requires a court to dismiss any medical malpractice claim where the plaintiff fails to file an affidavit stating that he or she has obtained the written opinion of a legally qualified health care provider which states that the defendant failed to use reasonable care and such care caused plaintiff's damages. Currently, it is within the court's discretion to dismiss the case. The affidavit must state the name and address of the health care provider offering the opinion. The health care provider offering the opinion must be licensed in the same profession and either practicing or within five years of retirement of practice in substantially the same specialty as the defendant. The time for filing the affidavit can be extended for up to 90 days. Allows a defendant to file a motion 180 days after the filing of the petition asking the court to examine the opinion of the health care provider. If the opinion fails to meet the requirements specified in the bill, the court must conduct a hearing within 30 days to determine whether there is probable cause to believe that one or more qualified and competent health care providers will testify that the plaintiff was injured because of the medical negligence of the defendant. If the court finds no probable cause, the court can dismiss the petition and hold the plaintiff responsible for the defendant's reasonable attorney fees and costs.

DESCRIPTION (continued)

PROVIDERS OF FREE HEALTH CARE SERVICE – Section 538.228 – Specifies that physicians who provide medical treatment to patients in city, county, or nonprofit health clinics that provide free health care service are not liable for civil damages for acts or omission, unless the damages were caused by gross negligence or by willful or wanton acts or omissions of the physician. This does not include the performance of an abortion.

BENEVOLENT GESTURES – Section 538.229 – Prohibits statements, writings or benevolent gestures expressing sympathy made to the person or to the family of the person from being admitted into evidence.

VENUE – Section 538.232 – Specify, for purposes of determining venue, that in any action against a health care provider for damages for personal injury or death arising out of the rendering of or failure to render health care services, the plaintiff will be considered injured by the health care provider only in the county where the plaintiff first received treatment by a defendant for the medical condition at issue in the case.

ACTIONS FOR IMPROPER HEALTH CARE – Section 538.300 – Sections 260.552, 537.068, 5.7.117, and subsections 2 and 3 of Section 408.040 would not apply to actions under Sections 538.205 to 538.230 (tort actions based on improper health care).

SEVERABILITY – Section 1 – Adds severability clause.

EFFECTIVE DATE OF ACT – Section 2 – Provides that the act shall apply to all cases filed after August 28, 2005.

CHANGE OF VENUE – Section 3 – If a plaintiff or defendant is added or removed from a petition and the addition or removal would alter the determination of venue, the judge shall, upon application of any party, transfer the case to a proper forum.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

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SOURCES OF INFORMATION

Office of the Attorney General

Office of Administration

– Administrative Hearing Commission

Office of State Courts Administrator

Department of Economic Development

Department of Transportation

Department of Mental Health

Department of Health and Senior Services

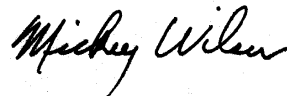
Department of Labor and Industrial Relations

Missouri Consolidated Health Care Plan

Department of Insurance

Department of Conservation

Office of the Secretary of State

A handwritten signature in black ink that reads "Mickey Wilson". The signature is fluid and cursive, with the first name "Mickey" and last name "Wilson" clearly distinguishable.

Mickey Wilson, CPA

Director

March 28, 2005